

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 07, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GABRIEL VALDEZ,

Petitioner,

v.

CHEEFE ROB GERERA,

Respondent.

NO: 4:23-CV-5105-TOR

ORDER GRANTING LEAVE TO
PROCEED *IN FORMA PAUPERIS*
AND SUMMARILY DISMISSING
PETITION WITHOUT PREJUDICE

Petitioner, a pretrial detainee at the Benton County Jail, seeks to file *in forma pauperis* a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Because it appears Petitioner lacks sufficient funds to prosecute this action, **IT IS ORDERED** that Petitioner's application, ECF No. 3, is **GRANTED**. For the reasons set forth below, the Court will summarily dismiss Petitioner's habeas corpus petition without prejudice.

SUMMARY DISMISSAL

Rule 4 of the Rules Governing Section 2254 Cases ("Habeas Rules") provides

ORDER GRANTING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND
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1 for the summary dismissal of a habeas petition “[i]f it plainly appears from the face
2 of the petition and any exhibits annexed to it that the petitioner is not entitled to relief
3 in the district court.” Habeas Rule 1(b) provides that this Court may “apply any or
4 all of these rules” to any habeas petition. Here, it is clear that Petitioner is not entitled
5 to federal habeas relief at this time.

6 Petitioner asks this court to “dismiss with prejudice” a pending state criminal
7 proceeding, and to “expunge [his] criminal history of any & all charges relating to
8 case no: 18-1-01494-03. or amend faulty information to reflect correct case no.” ECF
9 No. 1 at 7. Petitioner signs his supplemental documents utilizing UCC 1-308. *Id.* at
10 43. The Court notes that there is nothing in the Uniform Commercial Code that
11 would help Petitioner challenge the legality of his present confinement.

12 As his first ground for federal habeas corpus relief, Petitioner contends that
13 the charging document is “constitutionally defective” because it lists his criminal
14 case number as 18-1-01494-03, rather than as 18-10-14-94-1. *Id.* at 6. As his second
15 ground for federal habeas corpus relief, Petitioner asserts that he has no
16 administrative remedies “for redress through incorrect case no.” *Id.* (as written in
17 original). He indicates that he has filed “82 motions & Reconsiderations,” which
18 have all been denied. *Id.* He contends that he was told to “save it for appeal,” which
19 he considers “entrapment” and “selective enforcement.” *Id.* As his third stated
20 ground for federal habeas relief, Petitioner claims: “prosecutorial entrapment- in

1 violation of 7 U.S.C.S. § 2024 by misleading, misconduct and deliberate willful
2 blindness by pleading claim Through a ‘Diversion Contract’ and using incorrect case
3 No.” *Id.* (as written in original).

4 Liberaally construing the documents in the light most favorable to Petitioner,
5 the Court can discern no constitutional violation. The case numbers Petitioner
6 presents are substantially the same, save for the placement of the “dashes” and a
7 difference in the final numbers of “03” and “1.” While this is apparently very
8 concerning to Petitioner, these minor distinctions have no constitutional
9 implications.

10 Petitioner offers no authority for his conclusion that the presentation of a state
11 criminal case number is erroneous or how his alleged inability to challenge this
12 presentation in his state criminal proceedings constitutes a Fourteenth Amendment
13 due process violation. Petitioner states that he “filed a [11 USCS] chapter 13 with
14 the correct case no[.]” and “F.B.I. NCIC History with the Correct Superior Court
15 case no[.]” *Id.* at 6. The Court cannot plausibly infer from Petitioner’s documents
16 that he is in custody in violation of the laws or constitution of the United States. His
17 submissions received on August 3, 2023, ECF No. 4, do not alter the Court’s finding.
18 Therefore, Petitioner is not entitled to federal habeas corpus relief at this time and
19 his petition is dismissed without prejudice pursuant to Habeas Rule 4.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 2 1. The application to proceed *in forma pauperis*, **ECF No. 3**, is **GRANTED**.
- 3 2. The Petition, **ECF No. 1**, is **DISMISSED without prejudice**.
- 4 3. Any pending Motions are **DENIED as moot** and any hearings and
- 5 deadlines shall be terminated.
- 6 4. The Court certifies that there is no basis upon which to issue a certificate
- 7 of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate
- 8 of appealability is **DENIED**.

9 The Clerk of Court shall enter this Order, enter judgment, provide copies to

10 Petitioner, and **CLOSE** the file.

11 **DATED** August 7, 2023.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge